

**PUBLIC REDACTED VERSION**

WILMER CUTLER PICKERING  
HALE AND DORR LLP  
SONAL N. MEHTA (SBN 222086)  
Sonal.Mehta@wilmerhale.com  
2600 El Camino Real, Suite 400  
Palo Alto, California 94306  
Telephone: (650) 858-6000

DAVID Z. GRINGER (*pro hac vice*)  
David.Gringer@wilmerhale.com  
ROSS E. FIRSENBAUM (*pro hac vice*)  
Ross.Firsenbaum@wilmerhale.com  
RYAN CHABOT (*pro hac vice*)  
Ryan.Chabot@wilmerhale.com  
PAUL VANDERSLICE (*pro hac vice*)  
Paul.Vanderslice@wilmerhale.com  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007  
Telephone: (212) 230-8800

*Attorneys for Defendant Meta Platforms, Inc.*

ARI HOLTZBLATT (SBN 354631)  
Ari.Holtzblatt@wilmerhale.com  
MOLLY M. JENNINGS (*pro hac vice*)  
Molly.Jennings@wilmerhale.com  
2100 Pennsylvania Ave NW  
Washington, DC 20037  
Telephone: (202) 663-6000

MICHAELA P. SEWALL (*pro hac vice*)  
Michaela.Sewall@wilmerhale.com  
60 State Street  
Boston, Massachusetts 02109  
Telephone: (617) 526-6000

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

MAXIMILIAN KLEIN, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

META PLATFORMS, INC., a Delaware  
Corporation,

Defendant.

Case No. 3:20-cv-08570-JD

**DEFENDANT META PLATFORMS,  
INC.'S NOTICE OF MOTION AND  
MOTION FOR SUMMARY JUDGMENT  
REGARDING CONSOLIDATED  
CONSUMER CLASS ACTION  
COMPLAINT**

Hearing Date: July 24, 2025  
Time: 10:00 a.m.  
Judge: Hon. James Donato

**PUBLIC REDACTED VERSION****TABLE OF CONTENTS**

1		
2	NOTICE OF MOTION AND MOTION .....	1
3	MEMORANDUM OF POINTS AND AUTHORITIES .....	1
4	INTRODUCTION .....	1
5	BACKGROUND .....	4
6	ARGUMENT .....	5
7	I. PLAINTIFFS CANNOT DEMONSTRATE ANTITRUST INJURY AND	
8	STANDING .....	5
9	A. Plaintiffs Rely Solely On Economides's Unreliable And Inadmissible	
10	Opinions To Assert That Facebook Would Be The First Ever Platform To	
11	Pay All Of Its Users For Consuming Content .....	5
12	B. The Antitrust Laws Do Not Recognize Plaintiffs' Theory of Injury .....	7
13	II. PLAINTIFFS' OWN ALLEGATIONS, THEIR EXPERTS' ADMISSIONS,	
14	AND THE PLAINTIFFS' TESTIMONY ALL ESTABLISH THAT THE	
15	ALLEGED DECEPTION DID NOT HARM COMPETITION .....	10
16	A. Monopoly Acquisition .....	11
17	B. Monopoly Maintenance .....	13
18	III. PLAINTIFFS HAVE NOT ADEQUATELY DEFINED A MARKET AS A	
19	MATTER OF LAW .....	15
20	IV. PLAINTIFFS' CLAIMS ARE TIME BARRED .....	18
21	A. Plaintiffs' Claims Accrued Outside The Limitations Period .....	18
22	B. Based On Their Own Theory, Plaintiffs Cannot Establish A Continuing	
23	Violation As A Matter Of Law .....	20
24	V. PLAINTIFFS' ATTEMPTED MONOPOLIZATION CLAIM AND	
25	ABANDONED REQUEST FOR INJUNCTIVE RELIEF FAIL FOR THE SAME	
26	REASONS .....	24
27	CONCLUSION .....	24
28		

**PUBLIC REDACTED VERSION****TABLE OF AUTHORITIES**

Page(s)

**CASES**

<i>Airweld, Inc. v. Airco, Inc.</i> , 742 F.2d 1184 (9th Cir. 1984) .....	21
<i>Am. Pro. Testing Serv., Inc. v. Harcourt Brace Jovanovich Legal &amp; Pro. Publ'ns, Inc.</i> , 108 F.3d 1147 (9th Cir. 1997).....	2, 10, 11, 13
<i>Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters</i> , 459 U.S. 519 (1983).....	7
<i>Bay Area Surgical Mgmt. LLC v. Aetna Life Ins. Co.</i> , 166 F. Supp. 3d 988 (N.D. Cal. 2015) .....	23
<i>Chang v. Farmers Ins. Co., Inc.</i> , 2023 WL 5163288 (C.D. Cal. July 12, 2023).....	23
<i>City of Oakland v. Oakland Raiders</i> , 20 F.4th 441 (9th Cir. 2021) .....	8, 10
<i>Coronavirus Rep. v. Apple Inc.</i> , 2021 WL 5936910 (N.D. Cal. Nov. 30, 2021) .....	15, 16
<i>Coronavirus Rep. v. Apple, Inc.</i> , 85 F.4th 948 (9th Cir. 2023) .....	15, 16
<i>Duarte v. Quality Loan Serv. Corp.</i> , 2018 WL 2121800 (C.D. Cal. May 8, 2018) .....	21
<i>Electroglas, Inc. v. Dynatex Corp.</i> , 497 F. Supp. 97 (N.D. Cal. 1980) .....	20, 21
<i>FTC v. Qualcomm Inc.</i> , 969 F.3d 974 (9th Cir. 2020) .....	15
<i>Garcia v. Pueblo Country Club</i> , 299 F.3d 1233 (10th Cir. 2002) .....	12
<i>Garrison v. Oracle Corp.</i> , 159 F. Supp. 3d 1044 (N.D. Cal. 2016) .....	18, 19
<i>Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.</i> , 397 F.3d 1217 (9th Cir. 2005) .....	12
<i>Holmes v. SIPC</i> , 503 U.S. 258 (1992).....	7

**PUBLIC REDACTED VERSION**

1	<i>Image Tech. Servs., Inc. v. Eastman Kodak Co.,</i>	
2	125 F.3d 1195 (9th Cir. 1997) .....	24
3	<i>In re Am. Express Anti-Steering Rules Antitrust Litig.,</i>	
4	19 F.4th 127 (2d Cir. 2021) .....	7, 9
5	<i>In re Online DVD Rental Antitrust Litig.,</i>	
6	2011 WL 1629663 (N.D. Cal. Apr. 29, 2011) .....	7
7	<i>In re Online DVD-Rental Antitrust Litig.,</i>	
8	779 F.3d 914 (9th Cir. 2015) .....	8
9	<i>Klehr v. A.O. Smith Corp.,</i>	
10	521 U.S. 179 (1997).....	20
11	<i>McCarthy v. Intercontinental Exch., Inc.,</i>	
12	2022 WL 4227247 (N.D. Cal. Sept. 13, 2022) .....	7
13	<i>Morgan, Strand, Wheeler &amp; Biggs v. Radiology, Ltd.,</i>	
14	924 F.2d 1484 (9th Cir. 1991) .....	18
15	<i>New York v. Meta Platforms, Inc.,</i>	
16	66 F.4th 288 (D.C. Cir. 2023).....	19
17	<i>Oliver v. SD-3C LLC,</i>	
18	751 F.3d 1081 (9th Cir. 2014) .....	24
19	<i>Pace Indus., Inc. v. Three Phoenix Co.,</i>	
20	813 F.2d 234 (9th Cir. 1987) .....	3, 20, 21, 22
21	<i>Pacific Bell Tel. Co. v. linkLine Commc'ns, Inc.,</i>	
22	555 U.S. 438 (2009).....	12
23	<i>Queen City Pizza, Inc. v. Domino's Pizza, Inc.,</i>	
24	124 F.3d 430 (3d Cir. 1997).....	18
25	<i>Rambus Inc. v. FTC,</i>	
26	522 F.3d 456 (D.C. Cir. 2008) .....	15
27	<i>Rebel Oil Co., Inc. v. Atl. Richfield Co.,</i>	
28	51 F.3d 1421 (9th Cir. 1995) .....	16
	<i>Retractable Techs., Inc. v. Becton Dickinson &amp; Co.,</i>	
	842 F.3d 883 (5th Cir. 2016) .....	10
	<i>Reveal Chat Holdco, LLC v. Facebook, Inc.,</i>	
	471 F. Supp. 3d 981 (N.D. Cal. 2020) .....	19
	<i>Samsung Elecs. Co., Ltd. v. Panasonic Corp.,</i>	
	747 F.3d 1199 (9th Cir. 2014) .....	20, 22

**PUBLIC REDACTED VERSION**

1	<i>SaurikIT, LLC v. Apple Inc.</i> ,	
2	2022 WL 1768845 (N.D. Cal. May 26, 2022) .....	21, 23
3	<i>Schachar v. Am. Acad. of Ophthalmology, Inc.</i> ,	
4	870 F.2d 397 (7th Cir. 1989) .....	10
5	<i>S. Pac. Co. v. Darnell-Taenzer</i> ,	
6	245 U.S. 531 (1918).....	9
7	<i>Thurman Indus., Inc. v. Pay 'N Pak Stores, Inc.</i> , 8	
8	75 F.2d 1369 (9th Cir. 1989) .....	18
9	<i>Truck-Rail Handling Inc. v. BNSF Ry. Co.</i> ,	
10	2005 WL 8178364 (N.D. Cal. Mar. 8, 2005).....	15
11	<i>TYR Sport, Inc. v. Warnaco Swimwear, Inc.</i> ,	
12	709 F. Supp. 2d 821 (C.D. Cal. 2010) .....	11
13	<i>United States v. Microsoft</i> ,	
14	253 F.3d 34 (D.C. Cir. 2001).....	15
15	<i>United States v. Oracle Corp.</i> ,	
16	331 F. Supp. 2d 1098 (N.D. Cal. 2004) .....	18
17	<i>Universal Avionics Sys. Corp. v. Rockwell Int'l Corp.</i> ,	
18	52 F. App'x 897 (9th Cir. 2002) .....	18
19	<i>Yellow Pages Cost Consultants, Inc. v. GTE Directories Corp.</i> ,	
20	951 F.2d 1158 (9th Cir. 1991) .....	8

**STATUTES, RULES, AND REGULATIONS**

15 U.S.C. § 15(b) .....	18
Fed. R. Civ. P. 56.....	1

**OTHER AUTHORITIES**

<i>Areeda &amp; Hovenkamp, Antitrust Law</i> (2023).....	11
EJ Dickson, <i>Inside MeWe, Where Anti-Vaxxers and Conspiracy Theorists Thrive</i> ,	
ROLLING STONE (May 23, 2019).....	9

**PUBLIC REDACTED VERSION****NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE THAT, on July 24, 2025 at 10:00 a.m., Defendant Meta Platforms, Inc. will move for summary judgment on all claims raised in the Consolidated Class Action Complaint (Dkt. 87, “Compl.”). Meta’s motion is based on the supporting Memorandum of Points and Authorities below.

Pursuant to Federal Rule of Civil Procedure 56, Meta requests that the Court grant Meta summary judgment on all claims.

**MEMORANDUM OF POINTS AND AUTHORITIES****INTRODUCTION**

The Court should grant summary judgment for the same reason it denied class certification. Plaintiffs have, for years, advanced a single theory of antitrust injury: Meta’s alleged failure to pay every Facebook user five dollars a month. To try to prove that injury, plaintiffs rely entirely on the testimony of Dr. Nicholas Economides. But as the Court already concluded, Economides’s injury opinion is unreliable and unsupported—nothing “more than a fanciful application of economic theory untethered to real-world evidence about the alleged PSNS market.” Dkt. 905 at 8. The opinion Economides offers at this stage of the litigation is identical to the one the Court excluded under Rule 702. He imagines the same failure to pay, premised on the same economic theory, with the same evidentiary defects. Indeed, the (now-excluded) testimony plaintiffs submitted with their class certification motion expressly incorporated the injury opinions they propose to rely on at trial. Ex. 1, Economides Abridged CC Rep. ¶¶ 3, 84 n.147. So just as when the Court last considered Economides’s speculation, “‘there is simply too great an analytical gap between’ the facts on which Dr. Economides relies” and his assertion that Meta would respond to additional competition by inventing an entirely new business model. Dkt. 905 at 7. The Court should therefore (again) grant Meta’s *Daubert* motion seeking to exclude Economides’s testimony and grant summary judgment in light of plaintiffs’ failure to offer reliable and admissible evidence of antitrust injury.<sup>1</sup>

---

<sup>1</sup> Unless otherwise noted, “Ex.” citations reference exhibits to the Gringer Declaration submitted herewith, emphasis is added, internal citations are omitted, and objections are omitted.

**PUBLIC REDACTED VERSION**

1 Summary judgment is independently warranted for four additional reasons.

2 **First**, plaintiffs cannot show that the claimed failure to pay every user five dollars a month  
3 was proximately caused by the challenged conduct (supposed deception about data practices).  
4 Plaintiffs' theory of injury relies on a long, speculative chain of causation that starts with the  
5 baseless assumption that people choose online platforms based on representations about data  
6 collection and use, reimagines vague statements about "privacy" as critical to Facebook's  
7 popularity, and ends with the (again, baseless) assumption that if Meta had faced stronger  
8 competition from some unknown firm, it would have been forced to pay people five dollars a  
9 month to keep them on Facebook. The antitrust laws and Constitution do not recognize standing  
10 to assert injuries premised on such attenuated causal relationships. And they certainly do not do so  
11 when the "injury" and damages are the loss of imagined payments for enjoying a free service.

12 **Second**, plaintiffs' theory of liability fails as a matter of law. Plaintiffs' theory rests entirely  
13 on supposed deception, but deception can only violate the antitrust laws if it has a "a significant  
14 and enduring adverse impact on competition itself." *Am. Pro. Testing Serv., Inc. v. Harcourt Brace*  
15 *Jovanovich Legal & Pro. Publ'ns, Inc.*, 108 F.3d 1147, 1152 (9th Cir. 1997). Here, plaintiffs do  
16 not connect *any* of the statements or omissions they say were deceptive to *any* of the competitors  
17 they assert were harmed, let alone to any harm to market-wide competition; the plaintiffs testified  
18 such representations played no role in their decision to use Facebook; and plaintiffs' putative  
19 privacy expert concedes that the claimed deception had nothing to do with users' decision to  
20 choose Facebook over its rivals. Ex. 2, Lamdan Tr. 78:9-79:14. And while the entire premise of  
21 plaintiffs' case has been that Meta obtained monopoly power *by* defeating early competitors like  
22 Myspace *through* misrepresentations about data use and collection, Economides admits that  
23 "Facebook beat Myspace on its own merits," and that other market participants were not "going  
24 to be successful even ... without the misrepresentations." Ex. 3, Economides 3/24 Tr. 240:3-10;  
25 229:22-231:21. As for their maintenance theory, Plaintiffs have no plausible explanation or  
26 evidence for why Facebook's success over Myspace was competition on the "merits," but that said  
27 competition somehow transformed itself later, after Facebook was successful, into exclusionary  
28 conduct. Instead, plaintiffs' experts argue that Meta obtained a commanding position in the market

**PUBLIC REDACTED VERSION**

1 and, as a result, could not be overcome by its competitors. That theory is legally untenable; it  
2 means that Meta has not engaged in any anticompetitive conduct to obtain or maintain monopoly  
3 power.

4 ***Third***, plaintiffs’ “personal social networking services” (PSNS) market depends solely on  
5 the unreliable testimony of Dr. Joseph Farrell. If the Court grants Meta’s concurrently filed  
6 *Daubert* motion, plaintiffs have no means to define a market and summary judgment follows.  
7 Regardless, the proposed market fails as a matter of law. Facebook offers users all manner of  
8 entertainment without charge, from posting text updates, to buying and selling goods, to watching  
9 videos created by celebrities and influencers. As to each of these activities and experiences,  
10 Facebook faces intense competition for users’ time and attention from services ranging from  
11 TikTok to X (Twitter) to YouTube to numerous messaging apps. Against this fundamental truth,  
12 plaintiffs rely only on Farrell, who had never even *used* any of these apps (including Facebook)  
13 on a smartphone. Based on his inadmissible speculation, plaintiffs gerrymander a market around a  
14 subset of activities and experiences that they—and only they—term PSNS. But Farrell concedes  
15 that determining what features, activities, and experiences are in and out of the market poses  
16 “intractable questions” and creates “irreducible gray areas.” Ex. 4, Farrell Tr. 30:16-31:16. That is  
17 a fatal defect. Absent the ability to discern what is or is not PSNS, plaintiffs cannot identify the  
18 contours of the relevant market, much less determine whether competition within that market  
19 effectively constrains Meta’s conduct.

20 ***Finally***, plaintiffs’ submissions since the motion to dismiss have made clear that the  
21 “systematic” and “continuous campaign” of deception alleged to be anticompetitive began in 2006,  
22 and supposedly resulted in Meta acquiring a monopoly by 2011. This suit was filed in December  
23 2020. That is well outside the four-year statute of limitations of the antitrust laws. Plaintiffs have  
24 previously invoked the continuing violation doctrine, but that requires proving the deception  
25 within the limitations period was more than a “reaffirmation” of earlier conduct and inflicted some  
26 “new and accumulating injury.” *Pace Indus., Inc. v. Three Phoenix Co.*, 813 F.2d 234, 238 (9th  
27 Cir. 1987). Here, plaintiffs and their experts claim the opposite—they say the alleged deception  
28 was part of a unified campaign that started in 2006 and offer no theory of “new and accumulating





**PUBLIC REDACTED VERSION**

Rep. ¶138. Farrell, however, has been unable to consistently define what activities are PSNS, and has variously claimed that Facebook’s most popular features (or certain uses of those features) are inside or outside of the alleged market. For example, Farrell has testified that watching short-form videos is outside the PSNS market, but might have a “tinge” of PSNS depending on the viewer’s subjective and unknowable reasons for watching the video. Ex. 4, Farrell Tr. 15:2-3, 79:21-80:5.

Plaintiffs and their experts know of no firm that pays its users for consuming content online. Ex. 6, Economides 9/23 Tr. 115:18-116:2 (Q. “[Y]ou can’t think of any examples in the real world where users are paid to consume content? A. I cannot think of an example right now.”); Ex. 3, Economides 3/24 Tr. 255:11-23 (Q. “In the time since your class certification deposition and whatever additional work you’ve done since then, have you identified any platform that pays all of its users for their activity on the platform, just their normal activity? A. Well, I think I understand what you’re saying, and no, since my deposition I haven’t identified any platforms that pay everybody.”). The plaintiffs testified [REDACTED] Ex. 7, Klein Tr. 289:20-290:24; Ex. 9, Grabert Tr. (Vol. 2) 322:24-323:7; Ex. 10, Kupcho Tr. 234:16-19. Plaintiffs nevertheless assert that they suffered antitrust injury because, absent the claimed deception, Meta would pay every active user five dollars a month. Ex. 11, Economides Merits Rep. ¶276.

**ARGUMENT****I. PLAINTIFFS CANNOT DEMONSTRATE ANTITRUST INJURY AND STANDING****A. Plaintiffs Rely Solely On Economides’s Unreliable And Inadmissible Opinions To Assert That Facebook Would Be The First Ever Platform To Pay All Of Its Users For Consuming Content**

Plaintiffs’ sole theory of antitrust injury turns on Economides’s assertion that in a world where Meta made different statements about its privacy practices, additional competition would have forced the company to pay each of the hundreds of millions of people with active Facebook accounts in the United States five dollars a month. Dkt. 905 at 2. The Court already held that such implausible speculation has no basis in the record or reality, *id.* 7-13, so Meta does not detail those findings again here. Economides’s opinions are unchanged and remain inadmissible.

Without Economides’s speculation about Meta paying its users, plaintiffs cannot demonstrate antitrust injury as a matter of law. As plaintiffs told the Court, “the antitrust injury for

**PUBLIC REDACTED VERSION**

1 the users is a reduction in the level of compensation that would have been paid to all users,” Hr’g  
2 Tr. 4:9-14 (Oct. 31, 2024), and the only means plaintiffs have ever identified for substantiating  
3 that injury is Economides’s testimony, *see, e.g.*, Dkt. 793 at 28; Dkt. 820-1 at 4 (designating  
4 Economides as sole expert to testify on antitrust injury). Nor have plaintiffs offered evidence of  
5 any other injury. For example, plaintiffs and their experts have not (because they cannot)  
6 demonstrated that Facebook would have been “better” for the plaintiffs in the but-for world along  
7 any other dimension. To the contrary—Economides himself disclaimed offering an opinion on  
8 harm through a diminution in quality. Ex. 6, Economides 9/23 Tr. 102:5-13 (“Q. So in your but-  
9 for world, Facebook could have responded to more competition by offering better services instead  
10 of paying users; correct? A. Not correct. I think that paying users would be a crucial feature of the  
11 but-for world to make sure that people come to Facebook. Now, could it—could Facebook also  
12 have better features? Possibly. I don’t know.”). And although Economides has referenced [REDACTED]  
13 [REDACTED]  
14 [REDACTED] Ex. 11,  
15 Economides Merits Rep. ¶225.

16 The undisputed record confirms that the Court was right to reject Economides’s injury  
17 opinion as nothing “more than a fanciful application of economic theory untethered to real-world  
18 evidence about the alleged PSNS market.” Dkt. 905 at 8. Contradicting their theory of harm, each  
19 of the plaintiffs testified [REDACTED]  
20 [REDACTED] *See*, Ex. 9, Grabert Tr. (Vol. 2) 322:24-323:7 (“[REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]”); Ex. 7, Klein Tr. 290:11-20 ([REDACTED]); Ex. 10, Kupcho Tr. 234:16-19  
24 (“[REDACTED]  
25 [REDACTED]”). And as plaintiffs’ experts concede, if a platform did ever try to pay users,  
26 it would risk destroying the very experience that brought people to the service in the first place.  
27 Ex. 4, Farrell Tr. 272:20-273:8 (“If you pay people to take something that you might otherwise be  
28 selling, then you might get some, I’d call it, non-legitimate demand”); Ex. 5, Farrell Rep. ¶112

**PUBLIC REDACTED VERSION**

1 n.322 (“[REDACTED]”); Ex. 11, Economides Merits Rep. ¶303  
 2 [REDACTED]  
 3 (“[REDACTED]”  
 4 [REDACTED]  
 5 [REDACTED]). These undisputed points, and not a supposed lack of competition, are why Meta  
 6 does not pay users.

7 Plaintiffs have had years to substantiate their implausible theory that Facebook would pay  
 8 all its users. Instead, they have only Economides’s “conclusion of fiat rather than evidence,” Dkt.  
 9 905 at 13, and their own testimony rejecting the theory. The Court should again exclude  
 10 Economides’s antitrust injury opinion and grant Meta summary judgment.

11 **B. The Antitrust Laws Do Not Recognize Plaintiffs’ Theory of Injury**

12 Plaintiffs’ theory of injury separately fails because they cannot demonstrate that Meta’s  
 13 supposed failure to pay all users of Facebook five dollars per month was proximately caused by  
 14 the alleged deception. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of*  
 15 *Carpenters*, 459 U.S. 519, 535-37 (1983); *see also Holmes v. SIPC*, 503 U.S. 258, 268 (1992)  
 16 (antitrust plaintiff’s “right to sue . . . require[s] a showing that the defendant’s violation not only  
 17 was a ‘but for’ cause of his injury but was the proximate cause as well”). While courts may analyze  
 18 questions of antitrust standing by looking at a series of “factors,” the antitrust standing inquiry  
 19 “remains, fundamentally, one into proximate cause.” *In re Am. Express Anti-Steering Rules*  
 20 *Antitrust Litig.*, 19 F.4th 127, 143 (2d Cir. 2021). And when, as here, a theory of injury depends  
 21 on speculation and “vaguely defined links” between the harm asserted and the conduct alleged,  
 22 courts dismiss the claim or grant summary judgment. *Associated Gen. Contractors*, 459 U.S. at  
 23 540; *see also, e.g., McCarthy v. Intercontinental Exch., Inc.*, 2022 WL 4227247, at \*4 (N.D. Cal.  
 24 Sept. 13, 2022) (Donato, J.) (granting motion to dismiss for lack of antitrust standing where  
 25 “directness of the injury” was “questionable”); *In re Online DVD Rental Antitrust Litig.*, 2011 WL  
 26 1629663, at \*9 (N.D. Cal. Apr. 29, 2011) (granting summary judgment when plaintiff failed “to  
 27 satisfy the most ‘critical’ of antitrust standing requirements here—directness of the injury”). For  
 28 the same reasons, plaintiffs cannot demonstrate Article III standing. *In re Online DVD-Rental*

**PUBLIC REDACTED VERSION**

1 *Antitrust Litig.*, 779 F.3d 914, 921-22 (9th Cir. 2015).

2 First, plaintiffs cannot show that there is a “direct link” between the challenged statements  
3 and Meta not paying people to use Facebook. The directness of injury factor examines “the chain  
4 of causation” between plaintiffs’ asserted harms and any anticompetitive conduct. *City of Oakland*  
5 *v. Oakland Raiders*, 20 F.4th 441, 458 (9th Cir. 2021). The connection must be “close.” *Yellow*  
6 *Pages Cost Consultants, Inc. v. GTE Directories Corp.*, 951 F.2d 1158, 1162 (9th Cir. 1991).  
7 Plaintiffs’ theory, even if credited in full, fails that standard because it requires numerous unproven  
8 inferences. Meta would have had to face stronger competition absent the challenged statements,  
9 that stronger competition would have had to be from a firm whose product was more appealing  
10 than Facebook, and Meta would have had to respond to that competition by fundamentally  
11 changing its business model (and adopting one that has never previously been used in its industry)  
12 through paying all of its users five dollars a month. Even if plaintiffs could prove these logical  
13 leaps—and they have provided evidence establishing none of them, *see supra*, at 5-7; *see also*  
14 concurrently filed Motion to Exclude Nicholas Economides at 2-4—the mental gymnastics  
15 required do not warrant recognizing their claim, meaning it fails as a matter of law.

16 Notably, plaintiffs cannot show that the alleged deception caused enough people to remain  
17 active on Facebook that, in the absence of the deception, Meta would have had to start making  
18 payments to retain users. For such a theory to be viable, plaintiffs would have to first show that  
19 absent the deception, there would have been better competitive alternatives in the alleged PSNS  
20 market—without such alternatives, Meta would have no need to pay to keep users. But there is no  
21 evidence in the record of competitors offering products that plaintiffs would have preferred to  
22 Facebook absent the alleged deception. *See, e.g.*, Ex. 3, Economides 3/24 Tr. 239:1-16 (“Facebook  
23 had better privacy practices than Myspace.”). There is not even evidence that any competitors were  
24 negatively impacted by the alleged statements. Nearly all firms plaintiffs identify as failed  
25 competitors or unsuccessful entrants *themselves* attribute their lack of success to [REDACTED]

26 [REDACTED] *See, e.g.*, Ex. 12, DeWolfe Tr.  
27 87:10-15 (“[REDACTED]

28 [REDACTED]

**PUBLIC REDACTED VERSION**

1 [REDACTED]"); Ex. 13, Horowitz Tr.  
 2 129:7-17 ([REDACTED])  
 3 [REDACTED]  
 4 [REDACTED]). Economides similarly conceded that MeWe's lack of success was "not connected  
 5 to a particular deceptive statement" and that he did "not have an opinion on whether MeWe[']s] ...  
 6 demise had to do with" other factors like "the views that were expressed there." Ex. 3, Economides  
 7 3/24 Tr. 233:3-234:2; 235:15-236:3; *see also* EJ Dickson, *Inside MeWe, Where Anti-Vaxxers and*  
 8 *Conspiracy Theorists Thrive*, ROLLING STONE (May 23, 2019).

9       Regardless, plaintiffs cannot show the requisite impact on competition. For one, plaintiffs'  
 10 expert Sarah Lamdan argues that no one trusts Facebook on privacy and that the challenged  
 11 statements were *not* the reason anyone used Facebook. Ex. 2, Lamdan Tr. 77:21-79:1. The named  
 12 plaintiffs likewise testified [REDACTED]  
 13 [REDACTED] *See, e.g.*, Ex. 8, Grabert Tr. (Vol. 1) 204:14-205:13  
 14 (explaining that [REDACTED])  
 15 [REDACTED]); *id.* 208:14-211:7  
 16 ("[REDACTED]"); Ex. 10, Kupcho Tr. 37:2-16  
 17 ([REDACTED]). Without  
 18 showing that users were likely to rely on the statements made by Facebook that are at issue,  
 19 plaintiffs cannot show that there would be any impact on competition. And without showing that  
 20 the challenged statements were the proximate cause of any loss of competition, plaintiffs  
 21 necessarily cannot show that the challenged statements are what caused their injury. *See In re Am.*  
 22 *Express*, 19 F.4th at 139 n.7 (antitrust law "'does not attribute remote consequences to a  
 23 defendant,' even if those consequences are foreseeable" (quoting *S. Pac. Co. v. Darnell-Taenzer*,  
 24 245 U.S. 531, 533 (1918))).

25       The Ninth Circuit's decision to affirm the grant of a motion to dismiss on antitrust standing  
 26 grounds in *City of Oakland* is on all fours and controlling. There, the court held the plaintiff's  
 27 theory of injury—harms suffered because of the Raiders' move from Oakland to Las Vegas—  
 28 relied on "too many speculative links in the chain of causation between Defendants' alleged

**PUBLIC REDACTED VERSION**

1 restrictions on output and the City’s alleged injuries.” *City of Oakland*, 20 F.4th at 459-60. Oakland  
 2 alleged that but for the NFL’s conduct, which supposedly priced Oakland out of the market for  
 3 NFL teams, it would have kept the Raiders “or acquired another team.” *Id.* The court rejected that  
 4 theory of injury as leaving too many causal questions unanswered, including “Would new teams  
 5 have joined the NFL?” “Would they have found Oakland attractive?” and “Would the Raiders  
 6 have left Oakland in any event?” *Id.* As discussed, substantial causal questions exist here too. And  
 7 plaintiffs do even less to provide answers, despite being at a later stage of the case. Plaintiffs have  
 8 failed to establish antitrust injury and Article III standing as a matter of law.

9 **II. PLAINTIFFS’ OWN ALLEGATIONS, THEIR EXPERTS’ ADMISSIONS, AND THE**  
 10 **PLAINTIFFS’ TESTIMONY ALL ESTABLISH THAT THE ALLEGED DECEPTION DID NOT**  
 11 **HARM COMPETITION**

12 Plaintiffs’ theory of harm to competition turns on the notion that, beginning in 2006,  
 13 Facebook’s alleged misrepresentations and omissions about its “data practices” convinced  
 14 “enough users” to join and remain active on Facebook rather than its competitors. Dkt. 793 at 19.  
 15 Attributing an anticompetitive effect to deception, however, is strongly disfavored. *See, e.g.,*  
 16 *Schachar v. Am. Acad. of Ophthalmology, Inc.*, 870 F.2d 397, 400 (7th Cir. 1989) (when statements  
 17 are “false or misleading or incomplete or just plain mistaken, the remedy is not antitrust litigation  
 18 but more speech—the marketplace of ideas”); *Retractable Techs., Inc. v. Becton Dickinson & Co.*,  
 19 842 F.3d 883, 895 (5th Cir. 2016) (“false advertising alone hardly ever operates in practice to  
 20 threaten competition”). So the Ninth Circuit permits such suits only in rare circumstances. *Am.*  
 21 *Pro. Testing Serv.*, 108 F.3d at 1152 (observing that deception claims “should presumptively be  
 22 ignored”). Here, plaintiffs have presented nothing to overcome that presumption. Plaintiffs do not  
 23 even attempt to demonstrate that “enough users” responded to specific misrepresentations and  
 24 omissions by remaining active on Facebook—as explained, plaintiffs cannot even show that [REDACTED]  
 25 [REDACTED] *See, e.g.,* Ex. 8, Grabert Tr. (Vol. 1) 108:6-14 ([REDACTED])  
 26 [REDACTED]; Ex. 7, Klein Tr. 83:21-84:25 ([REDACTED]).

27 In any event, “a plaintiff that has discharged the de minimis presumption is not  
 28 automatically entitled to its own presumption of significant market effect.” *TYR Sport, Inc. v.*



**PUBLIC REDACTED VERSION**

1 *Warnaco Swimwear, Inc.*, 709 F. Supp. 2d 821, 833 (C.D. Cal. 2010). Plaintiffs must *still* prove  
2 that the claimed deception had “a significant and enduring adverse impact on competition itself in  
3 the relevant markets to rise to the level of an antitrust violation.” *Id.* at 832 (quoting *Am. Pro.*  
4 *Testing Serv.*, 108 F.3d at 1152); Areeda & Hovenkamp, *Antitrust Law* ¶651h (2023) (deception  
5 must have “the effect of significantly impairing the ability of rivals to compete”).

6 They cannot. As to acquisition, Economides concedes that Facebook won out over  
7 competitors “on its merits.” Ex. 3, Economides 3/24 Tr. 231:4-21. As to monopoly maintenance,  
8 neither he nor Lamdan can explain how Facebook’s continued success had anything to do with the  
9 alleged deception, and both now admit that users joined and remained on Facebook because of the  
10 initial (again, lawful) success—not statements about data use and collection. *Id.* 231:4-232:3,  
11 240:3-15; Ex. 2, Lamdan Tr. 79:3-14. Thus, whatever plaintiffs will be able to prove regarding  
12 whether the at-issue statements were deceptive, there is no evidence of a cognizable effect on  
13 competition. And there can be none, because plaintiffs’ experts have disclaimed its existence. That  
14 defect requires summary judgment. *See TYR Sport, Inc.*, 709 F. Supp. 2d at 838 (granting summary  
15 judgment when plaintiff “ha[d] not provided evidence from which a reasonable jury could infer a  
16 ‘significant and enduring adverse impact on competition’”).

17 **A. Monopoly Acquisition**

18 Starting with monopoly acquisition, plaintiffs’ theory is that Facebook’s privacy and data  
19 promises were critical to the defeat of early competitors like Myspace. Dkt. 793 at 21. But their  
20 conduct expert, Economides, has disclaimed that core allegation:

21 Q. So let’s go back and be very clear about this. You testified a few moments ago  
22 that you believe that Facebook beat Myspace on its own merits, you’d agree with  
that?

23 A. I said that, yes.

24 Q. Okay. And you stand by that, right?

25 A. Yes.

26 Q. And you agree that you’re not suggesting that the alleged misrepresentations and  
27 omissions in this case were the cause of Myspace’s decline, right?

28 A. That’s correct.



**PUBLIC REDACTED VERSION**

1 Ex. 3, Economides 3/24 Tr. 240:3-15; *see also* Ex. 6, Economides 9/23 Tr. 96:10-18 (“I would say  
2 that at the early stage, the privacy settings of Facebook, despite their problems, were better than  
3 the alternative, the alternative being Myspace.”). He then admitted the same about numerous other  
4 firms plaintiffs had identified in the litigation as early rivals in their contrived PSNS market. Ex.  
5 3, Economides 3/24 Tr. 229:22-231:3 (Bebo, Friendster, and Orkut failed “even without the  
6 misrepresentations”). So despite this entire lawsuit being premised on Facebook having “acquired  
7 its monopoly position” “through repeated misrepresentations over its data collection and use  
8 practices,” Dkt. 793 at 1, plaintiffs’ own expert now admits none of that is true. “Facebook won  
9 over Myspace” and its other early rivals “on its merits.” Ex. 3, Economides 3/24 Tr. 231:4-21.  
10 Because Section 2 “targets the willful acquisition or maintenance of [monopoly] power as  
11 distinguished from growth or development as a consequence of a superior product, business  
12 acumen, or historic accident,” this concession means that the challenged conduct is not unlawful.  
13 *Pacific Bell Tel. Co. v. linkLine Commc’ns, Inc.*, 555 U.S. 438, 447-48 (2009).

14 Plaintiffs have tried to errata these fatal admissions away, but a “deposition is not a take  
15 home examination.” *Garcia v. Pueblo Country Club*, 299 F.3d 1233, 1242 n.5 (10th Cir. 2002).  
16 Errata are “to be used for corrective, and not contradictory, changes.” *Hambleton Bros. Lumber*  
17 *Co. v. Balkin Enters., Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005). And here, Economides could not  
18 have been clearer that he stood by his testimony that Facebook won out over rivals like Myspace  
19 on the merits. *Supra*, at 11; *see also* Ex. 3, Economides 3/24 Tr. 295:3-15 (“Q. Is there anything  
20 in your testimony from today that you want to change or correct or do you stand behind your  
21 testimony from today? A. No, I don’t have anything to correct. Q. You stand behind it? A.  
22 Correct.”). It was instead only after Meta filed its initial motion for summary judgment that  
23 plaintiffs sought to qualify these answers. The Ninth Circuit prohibits such gamesmanship,  
24 rejecting errata submitted “after [defendant’s] motion for summary judgment was filed” when the  
25 “‘corrections’ were not corrections at all, but rather purposeful rewrites tailored to manufacture an  
26 issue of material fact.” *Hambleton*, 397 F.3d at 1225. And in all events, Economides made  
27 substantially the same concession in his earlier deposition, testifying that “at the early stage, the  
28 privacy settings of Facebook, despite their problems, were better than the alternative, the

**PUBLIC REDACTED VERSION**

1 alternative being Myspace.” Ex. 6, Economides 9/23 Tr. 96:10-18. Perhaps because they had not  
2 yet seen Meta’s motion for summary judgment, plaintiffs never changed that earlier admission.

3 **B. Monopoly Maintenance**

4 Plaintiffs’ monopoly maintenance theory fares no better. They claim that Meta maintained  
5 monopoly power by engaging in “continued deception” to attract users since 2006. Dkt. 793 at 1;  
6 *supra*, at 10. But plaintiffs concededly offer nothing tying the alleged maintenance of monopoly  
7 power to *any* misrepresentations, Ex. 14, Second Supp. Resps. to Interrogs. 6, 7, 8 (Jan. 18, 2023),  
8 much less evidence or analysis to explain how deception had a “significant and enduring adverse  
9 impact on competition,” *Am. Pro. Testing Serv.*, 108 F.3d at 1152. Economides’s approach to  
10 Google+ is illustrative—he could not identify *any* misstatement or omission that “caused users to  
11 choose Facebook over Google+,” and disclaimed the need to identify the actual anticompetitive  
12 effect of deception on Google+. Ex. 3, Economides 3/24 Tr. 244:5-19; *id.* 246:12-247:5. Instead,  
13 he testified that he did “not have a specific statement” or “specific evidence that shows that a  
14 specific statement of omission or misrepresentation or anything else” in his report or those of other  
15 experts that “would result in a user going to Facebook rather than Google+.” *Id.* 244:5-19. And  
16 asked whether he had “quantified or even considered whether there were any other factors as part  
17 of your opinions that you’ve offered in the case” that led to Google+’s failure, Economides  
18 admitted “I do not believe I have details of other factors that did not help Google+.” *Id.* 249:3-10.  
19 The same defects infect Economides’s analysis of MeWe, the other later “competitor” plaintiffs  
20 identify. *See supra*, at 9.

21 Unable to connect the alleged deception to any harm to competition, Economides argues  
22 that “the deceptive statements allowed Facebook to become a monopolist ... and *that*  
23 *automatically means* that the other companies like Google+ are not anymore a big competitor.”  
24 Ex. 3, Economides 3/24 Tr. 250:3-25. Setting aside the unexplained inconsistency of this theory—  
25 admitting that Facebook beat Myspace and other early competitors on the merits, then claiming  
26 without evidence that the deception nevertheless contributed to a monopoly—this would not save  
27 plaintiffs’ claim. Economides asserts that “the fundamental reason” that competitors like Google+  
28 became “marginal compan[ies]” when they tried to enter the alleged market “was the *achievement*

**PUBLIC REDACTED VERSION**

1 of Facebook as a monopoly.” *Id.* 248:16-249:1. But, again, according to Economides himself, that  
 2 “achievement” of initial monopoly power lacks any connection to the claimed deception or  
 3 anticompetitive conduct. *Supra*, at 11-13. So to the extent he now claims it was the initial (lawful)  
 4 acquisition of monopoly power that caused later harm to competition, this would not violate the  
 5 antitrust laws.

6 The plaintiffs’ testimony likewise offers no evidence of the effect of the alleged deception,  
 7 and each explained [REDACTED]

8 [REDACTED] Sarah Grabert testified [REDACTED]

9 [REDACTED]  
 10 [REDACTED]  
 11 Ex. 8, Grabert Tr. (Vol. 1) 204:14-205:13, 208:14-20, 210:16-211:7. Max Klein admitted [REDACTED]

12 [REDACTED] Ex. 7,

13 Klein Tr. 60:25-61:3; 201:1-14; 210:2-211:17. Rachel Banks Kupcho testified [REDACTED]

14 [REDACTED]  
 15 [REDACTED] Ex. 10, Kupcho Tr. 37:2-16; 93:21-24. Each of the named plaintiffs also  
 16 admitted [REDACTED]

17 [REDACTED]  
 18 [REDACTED] See Ex. 15, Plaintiffs’ Suppl. Resps. to Interrogs. 15 and 16 (Feb. 15, 2023) at 6.

19 Lamdan confirmed that the alleged deception had nothing to do with users choosing  
 20 Facebook over competitors. She testified “I’m not sure how much Facebook’s PR about its trust  
 21 campaign, its trust campaign to the public—I’m not sure how that swayed users.” Ex. 2, Lamdan  
 22 Tr. 77:21-78:7. When asked whether she was “offering an opinion that any public statement  
 23 Facebook made about privacy was relied on by users,” she admitted that the supposed  
 24 misrepresentations and omissions had no impact:

25 I know that the intent of Facebook was to build trust, but I feel like usually the  
 26 reason people return to Facebook after leaving Facebook because they have a lack  
 27 of trust is because of the Hobson’s choice which I do an in depth analysis about in  
 28 my reports. I believe that users just feel resigned to use Facebook. Outside studies  
 have reiterated that. I didn’t invent that. But I think that it’s more that people return  
 to using—they don’t return to using Facebook because they’re so thrilled by these

**PUBLIC REDACTED VERSION**

1 public statements. They return to using Facebook because they feel they have no  
2 other choice.

3 *Id.* 78:9-79:1. She then went further, asserting that users *did not rely* on the alleged  
4 misrepresentations and omissions in deciding to use Facebook. Questioned whether she thought  
5 “Facebook users trust Facebook’s statements about privacy,” she explained:

6 No, that’s pretty well documented that Facebook users know that Facebook’s  
7 privacy washing, whatever Facebook says to try to make themselves look more  
8 trustworthy, people generally do not trust that Facebook is doing what is best for  
their data and for their privacy but they feel like they have no other choice but to  
use Facebook.

9 *Id.* 79:3-14.

10 The failure to connect the alleged deception to any harm to competition or anticompetitive  
11 effect decides this case. Plaintiffs bear the burden of presenting evidence that deception “harm[ed]  
12 consumers” for that conduct “to be condemned as exclusionary.” *United States v. Microsoft*, 253  
13 F.3d 34, 58-59 (D.C. Cir. 2001); *id.* (“[T]he plaintiff, on whom the burden of proof of course rests,  
14 must demonstrate that the monopolist’s conduct indeed has the requisite anticompetitive effect.”);  
15 *accord Rambus Inc. v. FTC*, 522 F.3d 456, 463 (D.C. Cir. 2008) (“It is settled law that the mere  
16 existence of a monopoly does not violate the Sherman Act.”). They cannot.

### 17 **III. PLAINTIFFS HAVE NOT ADEQUATELY DEFINED A MARKET AS A MATTER OF LAW**

18 Plaintiffs’ claims separately fail because they have not defined a legally cognizable market.  
19 A Section 2 plaintiff bears the burden of proving “the defendant has monopoly power in the  
20 relevant market.” *Coronavirus Rep. v. Apple, Inc.*, 85 F.4th 948, 954 (9th Cir. 2023). Although  
21 defining a market often involves questions of fact—and a number of other factual issues would be  
22 raised at any trial—“[a] threshold step in any antitrust case is to *accurately* define the relevant  
23 market.” *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020). This inquiry requires an  
24 assessment of reasonable interchangeability, and “*all* products reasonably interchangeable by  
25 consumers” must be included in the candidate market. *See Microsoft*, 253 F.3d at 52. When “[o]ne  
26 cannot discern what is included and what is not,” the market fails as a matter of law. *Coronavirus*  
27 *Rep. v. Apple Inc.*, 2021 WL 5936910, at \*8 (N.D. Cal. Nov. 30, 2021) (granting motion to  
28 dismiss); *accord Truck-Rail Handling Inc. v. BNSF Ry. Co.*, 2005 WL 8178364, at \*6 (N.D. Cal.

**PUBLIC REDACTED VERSION**

1 Mar. 8, 2005) (when “Plaintiffs’ evidence ‘cannot sustain a jury verdict on the issue of market  
2 definition,’” the Ninth Circuit has held that “‘summary judgment is appropriate.’” (quoting *Rebel*  
3 *Oil Co., Inc. v. Atl. Richfield Co.*, 51 F.3d 1421, 1435 (9th Cir. 1995))). That is the case here.

4 To begin, the proposed market relies entirely on the inadmissible and internally  
5 contradictory testimony of Joseph Farrell. If the Court grants Meta’s *Daubert* motion, plaintiffs  
6 have offered no evidence of a relevant market and their claims necessarily fail. *Coronavirus Rep.*,  
7 85 F.4th at 957 (“Failing to define a relevant market alone is fatal to an antitrust claim.”).

8 But even if Farrell’s opinion were admitted, summary judgment remains appropriate.  
9 Plaintiffs assert that the relevant market includes different uses of certain features on Facebook,  
10 Instagram, Google+, Snapchat, and MeWe—for example, looking at certain posts in a feed that  
11 are from your friends about their personal lives—and previously included at least aspects of several  
12 platforms that were largely defunct by 2016 (Myspace, Friendster, and Orkut). Ex. 5, Farrell Rep.  
13 ¶¶26-27, 247-49. At the same time, plaintiffs exclude from their market numerous other firms that  
14 compete for user time and attention and offer similar experiences and features, like TikTok,  
15 YouTube, Pinterest, X, and Reddit. *Id.* ¶¶37, 161-64, 258; Ex. 4, Farrell Tr. 14:14-15:14. Plaintiffs  
16 cannot offer any coherent explanation for this results-driven inconsistency, and have offered no  
17 discernable means to identify what constitutes “personal social networking services.”

18 Indeed, “what is included and what is not” in the PSNS market has never been clear.  
19 *Coronavirus Rep.*, 2021 WL 5936910, at \*8. The operative complaint pleads “distinct” markets  
20 for “Social Network” and “Social Media” services. Compl. ¶¶37, 260-73, 298-307. Facebook was  
21 both, while Instagram was only the latter. *Id.* Plaintiffs then abandoned “Social Media” and  
22 revamped their “Social Network” market, contending in June 2023 that it now included Instagram.  
23 Ex. 16, Third Supp. Resps. & Objs. to Meta’s Interrog. 1 (June 23, 2023). “Social networks” next  
24 became “personal social networks,” defined by “[REDACTED]” Ex. 17, Economides CC  
25 Rep. ¶23. Under this new rubric, Facebook offers both PSNS and non-PSNS services, and whether  
26 any individual feature is PSNS depends on how it is being used. *Id.* ¶¶82, 86. Plaintiffs then  
27 reinvented their market a *third* time, offering conflicting expert opinions. Economides claimed that  
28 every use of every feature of Facebook is PSNS because of a vague “social graph aspect,” even

**PUBLIC REDACTED VERSION**

1 when a user is doing the exact same thing—such as watching a short-form video—that she could  
 2 do on a platform excluded from the market. Ex. 3, Economides 3/24 Tr. 84:8-22. Farrell instead  
 3 emphasized distinctions within Facebook based on features and how they are being used, including  
 4 “PSNS versus short-form video,” an area where “TikTok and YouTube, they provide considerable  
 5 competition.” Ex. 4, Farrell Tr. 28:5-29:6, 102:2-14; *id.* 23:9-22 (“TikTok primarily offers, as I  
 6 understand it, short-form videos, and Meta does likewise, and in that product line, whatever the  
 7 market delineation, they do compete, I think.”).

8 Forced to choose, plaintiffs elected to rely on Farrell. Dkt. 859 at 2. But he admits that  
 9 determining what is or is not PSNS poses “intractable questions” and “irreducible gray areas.” Ex.  
 10 4, Farrell Tr. 30:16-31:16. For example:

11 Q. Okay. If I see a reel video while I’m in Instagram home, is that PSNS?

12 A. I think it depends on the video and *perhaps on why you’re watching that video.*

13 So there are some, obviously, difficulties when it comes to evaluating market  
 14 shares, based on the difficulty of verifying from outside those things. But  
 15 conceptually, if this is a video that you just think will be amusing or educational  
 16 for you and it has nothing to do with your friends and family, then, no. If it’s  
 17 something that your mom sent you saying, let’s discuss this next Thanksgiving,  
 18 then I would say, yes.

16 Q. How would Facebook know in advance whether a video that someone is going  
 17 to watch is for entertainment, amusement, or friends and family?

18 A. They might not. I don’t know.

19 *Id.* 29:19-30:10.

20 According to Farrell, the same video viewed by the same person on the same service could  
 21 thus be both in and out of the market depending on nothing more than some variance in the user’s  
 22 subjective motivations. Ex. 4, Farrell Tr. 29:19-30:10. But a market that “depends” on both the  
 23 individual piece of content being viewed by a particular user and that user’s reason for viewing it  
 24 has no discernable bounds. *Id.* Such a definition is impossible to apply *within* a given service,  
 25 much less across them. And without any coherent way to define what is PSNS, plaintiffs cannot  
 26 show what is reasonably interchangeable with a PSNS use, or who Meta’s relevant competitors  
 27 are. On plaintiffs’ definition, Meta could never even exercise monopoly power, given that whether  
 28 a particular use is PSNS depends on the subjective intent of a particular user.

**PUBLIC REDACTED VERSION**

1 The net of this is that plaintiffs have “posited a number of different, and inconsistent,  
 2 theories as to the relevant market for antitrust analysis purposes.” *Universal Avionics Sys. Corp.*  
 3 *v. Rockwell Int’l Corp.*, 52 F. App’x 897, 899 (9th Cir. 2002) (affirming summary judgment “for  
 4 failure to adequately define a relevant market”); *see also Morgan, Strand, Wheeler & Biggs v.*  
 5 *Radiology, Ltd.*, 924 F.2d 1484, 1489 (9th Cir. 1991) (affirming summary judgment when  
 6 plaintiffs put forward “insufficient evidence to show either the geographic or the product  
 7 market.”). Plaintiffs thus cannot identify the required “field of competition: the group or groups of  
 8 sellers or producers who have actual or potential ability to deprive each other of significant levels  
 9 of business.” *Thurman Indus., Inc. v. Pay ‘N Pak Stores, Inc.*, 875 F.2d 1369, 1374 (9th Cir. 1989).  
 10 Summary judgment is appropriate on that basis alone.

11 Plaintiffs cannot rely on the claim, as Farrell does, that there are vague differences between  
 12 services depending on a users’ subjective intent; “[m]ore is required” than “the mere notion that  
 13 there is ‘something different’ about the [in-market] products and all others.” *United States v.*  
 14 *Oracle Corp.*, 331 F. Supp. 2d 1098, 1159 (N.D. Cal. 2004) (rejecting a candidate market that  
 15 lacked any “quantitative metric” to “determine the distinction” between what is in and out). The  
 16 question is whether consumers consider services acceptable substitutes notwithstanding such  
 17 differences. *See, e.g., Queen City Pizza, Inc. v. Domino’s Pizza, Inc.*, 124 F.3d 430, 437 (3d Cir.  
 18 1997) (market defined by willingness of consumers to substitute even if “there may be some degree  
 19 of preference for the one [product] over the other”). On that point, plaintiffs have only Farrell’s  
 20 say-so. That provides no reliable way to assess substitution and thus what is in the relevant market.  
 21 This is not a factual dispute that a jury can or should decide—it is a fundamental failure of  
 22 plaintiffs’ theory that leaves them without any viable market definition and requires judgment as  
 23 a matter of law.

#### 24 **IV. PLAINTIFFS’ CLAIMS ARE TIME BARRED**

##### 25 **A. Plaintiffs’ Claims Accrued Outside The Limitations Period**

26 Private lawsuits seeking damages under Section 2 of the Sherman Act are subject to a four-  
 27 year statute of limitations. 15 U.S.C. § 15(b). The default rule is that such claims accrue “at the  
 28 time of the alleged anticompetitive conduct.” *Garrison v. Oracle Corp.*, 159 F. Supp. 3d 1044,



**PUBLIC REDACTED VERSION**

1 1065 (N.D. Cal. 2016). Plaintiffs filed their complaint on December 3, 2020, challenging an  
2 ostensibly “anticompetitive scheme” “that originated many years ago,” and supposedly resulted in  
3 Meta acquiring monopoly power no later than 2011. Compl. ¶2; Ex. 17, Economides CC Rep. ¶30;  
4 Ex. 11, Economides Merits Rep. ¶73. Such claims fall outside the statute of limitations.

5 First, plaintiffs’ monopoly acquisition theory turns on conduct occurring long before  
6 December 3, 2016. They argue that [REDACTED]  
7 [REDACTED] Ex. 17, Economides CC Rep. ¶323; Ex.  
8 11, Economides Merits Rep. ¶73 (“[REDACTED]  
9 [REDACTED]”). Any anticompetitive  
10 conduct giving rise to the alleged acquisition of monopoly power in 2011 necessarily occurred  
11 before the limitations period began in 2016.

12 Plaintiffs’ monopoly maintenance theory also relies on conduct before December 2016.  
13 They have asserted that Meta engaged in a “uniform and prolonged deception regarding its data  
14 collection and use practices” that began in 2006. Dkt. 648 at 1; Dkt. 793 at 7-9 (describing a  
15 “systematic” and “continuous campaign” around a “common theme” from the “early days of social  
16 networks”); Ex. 11, Economides Merits Rep., App’x C ([REDACTED]  
17 [REDACTED]);  
18 *id.* ¶9 [REDACTED] And plaintiffs have failed to identify *any* alleged  
19 misrepresentations that affected their decision whether to join or use Facebook, much less  
20 deception within the limitations period. *Supra*, at 10, 14.

21 So, as in other cases involving untimely claims based on Facebook’s early success,  
22 plaintiffs “acknowledge that the initial events giving rise to these claims occurred more than four  
23 years” before the filing of the complaint. *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 471 F. Supp.  
24 3d 981, 991 (N.D. Cal. 2020) (dismissing claims premised on anticompetitive conduct beginning  
25 before 2015 as untimely); *see also New York v. Meta Platforms, Inc.*, 66 F.4th 288, 295 (D.C. Cir.  
26 2023) (affirming dismissal under analogous laches standard of “old” claims premised on  
27 acquisition of monopoly power between 2012 and 2014). That necessarily renders their claims  
28 untimely under the default rule. *Garrison*, 159 F. Supp. 3d at 1065.



**PUBLIC REDACTED VERSION****B. Based On Their Own Theory, Plaintiffs Cannot Establish A Continuing Violation As A Matter Of Law**

Because plaintiffs' claims accrued more than four years before the filing of their complaint, they initially attempted to invoke the continuing violation doctrine to toll the statute of limitations. Dkt. 648 at 3; Compl. ¶¶244-46. After Meta's initial motion for summary judgment showed the doctrine cannot salvage a case based on an allegedly "uniform and prolonged deception regarding [Meta's] data collection and use practices" that began in 2006, Dkt. 648 at 1, plaintiffs abandoned the continuing violation doctrine when last describing how they would prove their claims at trial, Dkt. 793. In all events, proving a continuing violation requires plaintiffs to show that Meta "completed an overt act during the limitations period that meets two criteria: '1) It must be a new and independent act that is not merely a reaffirmation of a previous act; and 2) it must inflict new and accumulating injury on the plaintiff.'" *Samsung Elecs. Co., Ltd. v. Panasonic Corp.*, 747 F.3d 1199, 1202 (9th Cir. 2014) (quoting *Pace Indus.*, 813 F.2d at 238). Beyond that, a continuing violation—as the name suggests—requires demonstrating "a continuing injury to competition" during the limitations period. *Electroglas, Inc. v. Dynatex Corp.*, 497 F. Supp. 97, 105 (N.D. Cal. 1980). Taking their own theory at face value, plaintiffs cannot meet this burden. A claim based on conduct that plaintiffs themselves argue started before the limitations period, continued without change during it, and caused them no new harm after December 2016 is untimely as a matter of law.

*First*, as a legal matter, the continuing violation doctrine has no application to monopoly acquisition when the conduct giving rise to the acquisition occurred entirely before the limitations period. Plaintiffs must (at a minimum) identify an "overt act that is part of the violation" after December 3, 2016. *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 189 (1997). Here, plaintiffs do not identify an overt act relating to the alleged *acquisition* of monopoly power after that date. Indeed, the predicate conduct necessarily occurred no later than 2011. *Supra*, at 19.

*Second*, the continuing violation doctrine cannot resuscitate a monopoly maintenance theory premised on a supposedly "systematic" deception around a single "common theme" that plaintiffs assert began in 2006. Dkt. 793 at 7-9. The law requires plaintiffs to show "a new and

**PUBLIC REDACTED VERSION**

1 independent act that is not merely a reaffirmation of a previous act” and that this post-2016 act  
2 caused a “new and accumulating injury.” *Pace Indus.*, 813 F.2d at 238. The asserted overt act must  
3 “differ from what [Meta] is alleged to have done starting in [2006],” *SaurikIT, LLC v. Apple Inc.*,  
4 2022 WL 1768845, at \*2 (N.D. Cal. May 26, 2022), personally harm plaintiffs, and itself be  
5 actionably anticompetitive, *Pace Indus.*, 813 F.2d at 238-39. Because plaintiffs identify *no* new  
6 harm to themselves or competition within the limitations period, assert that the in-period conduct  
7 *is* a reaffirmation of prior acts, and argue that it *does not* differ from what occurred before 2016,  
8 the Court should grant summary judgment on their monopoly maintenance theory. Indeed,  
9 plaintiffs all joined Facebook long before 2016, and testified that they never made decisions about  
10 what platforms to use based on representations about data practices, much less representations  
11 during the limitations period. *Supra*, at 14. That failure to tie any conduct within the limitations  
12 period to any consequence to the plaintiffs precludes a continuing violation.

13 Moreover, plaintiffs cannot show an overt act within the limitations period that itself  
14 “violate[s] antitrust laws.” *Pace Indus.*, 813 F.2d at 239. An overt act must cause “continuing  
15 antitrust harm, i.e., a continuing injury *to competition*, not merely a continuing pecuniary injury to  
16 a plaintiff.” *Electroglas, Inc.*, 497 F. Supp. at 105; *Airweld, Inc. v. Airco, Inc.*, 742 F.2d 1184,  
17 1190 (9th Cir. 1984) (“[F]or the cause of action to reaccrue Airweld was required to show Airco  
18 committed acts which not only caused it injury but also caused antitrust injury during the  
19 limitations period.”). Plaintiffs must therefore demonstrate that the alleged deception harmed  
20 competition after December 2016. But they have failed to connect any of the claimed  
21 misrepresentations or omissions to the fortunes of Meta’s competitors at any time, to say nothing  
22 of the failures of rivals occurring within the limitations period. Economides testified that he “didn’t  
23 quantify the alleged anticompetitive effect in 2011,” for example, “and then compare that to the  
24 alleged anticompetitive effect of some sort of deception in 2017.” Ex. 3, Economides 3/24 Tr.  
25 254:7-17; *id.* (“A. I have not done an analysis of that over the period of years, that’s right.”); *see*  
26 *also infra*, at 22-23. Economides’s concession that he did no such analysis renders plaintiffs’  
27 claims untimely. *Duarte v. Quality Loan Serv. Corp.*, 2018 WL 2121800, at \*8 (C.D. Cal. May 8,  
28 2018) (“The continuing violation doctrine is inapplicable when, as here, the actions falling within

**PUBLIC REDACTED VERSION**

1 the period of limitations are not themselves violations.”). And even if plaintiffs *had* shown some  
2 actionable and timely harm to competition (they have not), it would still not save their claims  
3 because they have not and cannot identify any connection between the alleged deception, their  
4 own use of Facebook, and Meta’s failure to pay all of its users five dollars. *Supra*, at 7-10; *see also*  
5 *Samsung*, 747 F.3d at 1202 (overt act “must inflict new and accumulating injury *on the plaintiff*”  
6 (quoting *Pace Indus.*, 813 F.2d at 238)). Plaintiffs instead testified that the alleged deception had  
7 nothing to do whether they used Facebook, and that they would refuse payments. *Supra*, at 6, 14.

8 Plaintiffs have also affirmatively disclaimed the kind of new or different conduct that could  
9 constitute a distinct overt act, instead asserting that since “the early days of social networks” Meta  
10 has engaged in a “continuous” and “long-standing campaign of market-wide deception” based on  
11 a single “common theme.” Dkt. 793 at 8-9, 19. Indeed, plaintiffs have refused to separate out the  
12 component parts of the allegedly anticompetitive scheme, stating that liability cannot be “[REDACTED]  
13 [REDACTED]” Ex. 14, Second Supp. Resps. & Objs. to Meta’s Interrogs. 6, 7, 8 (Jan.  
14 18, 2023); Ex. 18, Resps. to Meta’s Fourth Set of Interrogs. (Mar. 24, 2023) (describing the  
15 deception as consisting of “substantially similar practices” and refusing “to identify every  
16 permutation or every instance of [them]”). Consistent with this, Economides offered only an  
17 opinion “with respect to the alleged anticompetitive effects that takes into account *all* of the  
18 statements and omissions,” testifying that he had “taken them as a whole.” Ex. 3, Economides 3/24  
19 Tr. 181:4-16.

20 Even when plaintiffs have made some attempt at identifying specific statements after  
21 December 2016 as allegedly false and misleading, they only confirm the unified nature of the  
22 alleged deception. Plaintiffs’ expert claims, for example, that [REDACTED]

23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] Ex. 11, Economides Merits  
26 Rep. App’x C. The actual statement quoted and alleged to be deceptive is that [REDACTED]

27 [REDACTED]  
28 do not constitute antitrust violations under any circumstances, and here the lead plaintiff testified

**PUBLIC REDACTED VERSION**

1 [REDACTED] Ex. 7, Klein Tr.  
2 83:16-20 (“[REDACTED]  
3 [REDACTED]  
4 [REDACTED]”). But even if these vagaries could violate the law, they are exactly what plaintiffs  
5 claim have been deceptive since 2006. Ex. 11, Economides Merits Rep. App’x C. ([REDACTED]  
6 [REDACTED]  
7 [REDACTED]).

8 Other alleged misrepresentations are likewise mere echoes of earlier statements. *Compare*  
9 *id.* ([REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]), with *id.* ([REDACTED]  
13 [REDACTED]  
14 [REDACTED]). Whether such statements are true or false, they indisputably concern the same  
15 subject—as even plaintiffs admit. *Id.* ([REDACTED]  
16 [REDACTED]).

17 Because plaintiffs allege that Meta made additional statements about data use and  
18 collection after 2016 that *continued* a uniform campaign, the challenged acts only “reaffirm[]”  
19 those earlier acts under plaintiffs’ own theory. *Bay Area Surgical Mgmt. LLC v. Aetna Life Ins.*  
20 *Co.*, 166 F. Supp. 3d 988, 999 (N.D. Cal. 2015) (engaging in a “continu[ing] stream of  
21 communications” does not represent “new or independent action” as required to demonstrate a  
22 continuing violation); *see also Chang v. Farmers Ins. Co., Inc.*, 2023 WL 5163288, at \*3 (C.D.  
23 Cal. July 12, 2023) (misrepresentations about past conduct were “mere reaffirmations” of the  
24 original deceptions insufficient to show continuing violation of RICO statute). Accordingly, even  
25 taking their deception theory at face value, plaintiffs necessarily fail to establish how Meta’s  
26 conduct has changed after December 2016, *SaurikIT*, 2022 WL 1768845, at \*3, and summary  
27 judgment is required.

**PUBLIC REDACTED VERSION****V. PLAINTIFFS' ATTEMPTED MONOPOLIZATION CLAIM AND ABANDONED REQUEST FOR INJUNCTIVE RELIEF FAIL FOR THE SAME REASONS**

In addition to their acquisition and maintenance theories seeking monthly payments, plaintiffs argue that Meta attempted to monopolize the PSNS market, and their complaint sought injunctive relief. Dkt. 793 at 3; Compl. at Prayer for Relief. Their attempted monopolization claim is subject to the same statute of limitations, and also requires proof of harm to competition, a relevant market, and antitrust standing. *See Image Tech. Servs., Inc. v. Eastman Kodak Co.*, 125 F.3d 1195, 1202 (9th Cir. 1997). As to relief, plaintiffs' failed motion for class certification only references seeking damages. Regardless, injunctive relief is barred by both laches and the substantive defects discussed above. *Oliver v. SD-3C LLC*, 751 F.3d 1081, 1086 (9th Cir. 2014) (courts "look to the same legal rules that animate the four-year statute of limitations" for laches). Summary judgment is thus appropriate for the same reasons as on plaintiffs' primary theories.

**CONCLUSION**

The Court should grant summary judgment on all claims.

Dated: April 28, 2025

Respectfully submitted,

By: /s/ Sonal N. Mehta

Sonal N. Mehta

WILMER CUTLER PICKERING  
HALE ND DORR LLP

*Attorney for Defendant Meta Platforms, Inc.*

**PUBLIC REDACTED VERSION**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of April, 2025, I electronically transmitted the public redacted version of the foregoing document to the Clerk's Office using the CM/ECF System and caused the version of the foregoing document filed under seal to be transmitted to counsel of record by email.

By: /s/ Sonal N. Mehta

Sonal N. Mehta